

The Madhya Pradesh Upkar Adhiniyam, 1981

Act 1 of 1982

Keyword(s):
Cess, Fund, Energy Development Cess, Urban Development Cess, Cess on Land and Buildings, Vacant Land, Agricultural Land

THE MADHYA PRADESH UPKAR ADHINIYAM, 1981
[NO 1 OF 1982]

[*Received the assent of the President on the 16th December, 1981: assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)" dated the12th January1982*].

An Act to provide for levy of certain cesses.

Be it enacted by the Madhya Pradesh Legislature in the Thirty-second Year of the Republic of India as follows:-

1. Short title, extent and commencement.-(1) This Act may be called the Madhya Pradesh Upkar Adhiniyam, 1981.

(2) It extends to the whole of the State of Madhya Pradesh.

(3) It shall come into force on such date as the State Government may, by notification, 2appoint 3[and different dates may be appointed for different provision of this Act:

Provided that the provisions of Part III shall come into force with effect from the 1st October, 1982 and any notification issued bringing that part into force from any earlier date shall be and shall always be deemed never to have been issued.

PART I - ENERGY DEVELOPMENT CESS

2. Definitions.- In this part unless there is anything repugnant in the subject or context,

1. The State Government brought into force Ord. 9 of 1983 from 1.12.1983 vide notfn. Published in M.P. Rajpatra, (Asadharan). Dated 23.11.1983, p.3081.

2. Date 1.2.1982 appointed for parts I, II and III, vide Notfn. Published in M.P. Rajpatra, (Asadharan), dated 25.2.1982, p.270. But enforcement of part III from 1.3.1982 is cancelled and fixed at 1.10.1982 vide MP Act 35 of 1982..

(a) "cess" means the energy development cess levied under section 3;

(b) "Fund" means the energy development fund referred to in sub-section (2) of section 3;

(c) words and expressions used but not defined in this part and defined in the Madhya Pradesh Electricity Duty Act.1949 (X of 1949), shall have the meaning respectively assigned to them in that Act.

3.Levy of energy development cess.-(1) Subject to the exceptions specified in section 4, every distributor of electrical energy shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of one paisa per unit on the total units of electrical energy sold or supplied to a consumer or consumed by himself or his employees during any month:

Provided that no cess shall be payable in respect of electric energy-

1[(i) (a) sold or supplied to the Government of India for consumption by that Government; or

(b) sold or supplied to the Government of India or a railway company for consumption in the Construction, maintenance or operation of any railway administered by the Government of India];

2[(ii) sold or supplied in bulk to a Rural Electric Co-operative Society registered under the Madhya Pradesh Co-operative Societies.

Explanation.- For the purposes of this sub-section "month" means such period as may be prescribed.

(2) The proceeds of the cess under sub-section (1) shall first be credited to the Consolidated Fund of the State and the State Government may, at the commencement of each financial year, after due appropriation has been made by law, withdraw from the Consolidated Fund of the State all amount equivalent to the proceeds of cess realized by the State Government in the preceding financial year and shall place it to the credit of a separate fund to he called the Electrical Development Fund and such credit to the said fund shall he an expenditure charged on the Consolidated Fund of the State Government of Madhya Pradesh.

(3) The amount in the credit of the fund shall of the discretion of the State Government utilized for-

(a) research and development in the field of energy including electrical energy as we11 as other conventional and non-conventional sources of energy;

(b) improving the efficiency of generation, transmission, distribution and utilization of energy including reduction of losses In transmission and distribution;

1. Subs. by M.P.24 of 1984, w.e.f. 1.3.1982.

2. Omitted by M.P. 47 of 1984 and inserted by M.P. 28 of 1985, w.e.f. 1.10.1984.

(c) research in design, construction, maintenance, operation, and materials of the equipment used in the field of energy with a view to achieve optimum efficiency, continuity and safety;

(d) survey of energy sources including non-perennial sources to alleviate energy shortage;

(e) energy conservation programmers;

(f) extending such facilities and services to the consumers as may be deemed necessary;.

(g) creation of a laboratory and testing facilities for testing of electrical appliances and equipments and other equipments used in the field of energy;

(h) programmers of training conducive to achieve any of the above objectives;

(i) transfer of technology in the field of energy; and

1[(ii) any purpose connected with safety of electrical installations: and]

(j) any other purposes connected with improvement of generation, transmission, distribution or

utilization of the electrical and other forms of energy, as the State Government may, by notification, specify.

Explanation.- In this sub-section "energy" includes all conventional and non-conventional forms of energy.

(4) If any question arises as to whether the purpose for which the fund is being utilized is a purpose falling under sub-section (3) or not, the decision of the State Government thereon shall be final and conclusive.

4. Madhya Pradesh Act No. X of 1949 and rules made thereunder to apply.- The provisions of sections 4 to 9 (both inclusive) of the Madhya Pradesh Electricity Duty Act, 1949 (X of 1949) and the rules made thereunder shall mutatis mutandis apply to cess under this Act as they apply to levy of duty on sale or consumption of electrical energy under that Act and for that purpose reference to "duty" or "electricity duty" in the said Act or the rules made thereunder, as the case may be, shall be construed as reference to "cess".

PART II - URBAN DEVELOPMENT CESS

5.Definition.- In this part,

(a) "cess" means urban development cess levied under section 6;

(b) "law relating to local authority" means

(i) in the case of a municipal corporation, the Madhya Pradesh Municipal Corporation Act, 1956 (No.23 of 1956):

1. Ins. by M.P.28 of 1985, w.e.f. 31.12.1985.

(ii) in the case of a municipal council or a notified area committee, the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961);

(iii) in the case of a Special Area Development Authority, the Madhya Pradesh, Nagar Tatha Gram Nivesh Adhiniyam, 1973 (No, 23 of 1973);

(iv) in the case of Cantonment Board, the Cantonment Act, 1924 (II of 1924);

(c) "local authority" means a municipal corporation, municipal council, notified area committee, special area development authority or a cantonment board, as the case may be, constituted or deemed to have been constituted under the law relating to local authority concerned;

(d) "municipal area" means the area comprised within the limits of a local authority;

(e) "Sampatti Kar Adhiniyam" means the Madhya Pradesh Nagariya Sthawar Sampatti Kar Adhiniyam, 1964 (No.14 of 1964);

(f) "Urban Area" means the area of commercial or Industrial importance having population of ten thousand or above according to last census and which is not a municipal area;

(g) words and expressions used hut not defined in this part and defined in the law relating to local authority or the Sampatti Kar Adhiniyam, shall have the meanings respectively assigned to them in the said or the Sampatti Kar Adhiniyam, as the case may be.

6. Levy of cess on lands and buildings.- There shall be charged, levied and paid for each year an urban development cess on all lands or buildings or both situated in municipal area or urban area at the rate of 5 per centum of the annual letting value or annual value:

Provided that where the lands or buildings or both are in occupation of the owner himself, the rate of cess shall be one half of the rate aforesaid:

Provided further that no cess shall be charged, levied and paid in respect of lands or buildings or both, the annual letting value or annual value whereof is less than ten thousand rupees.

(2) The cess charged and levied under sub-section (1) sha11 be in addition tax charged and levied on lands or buildings or both in respect of annual letter value or annual value thereof under the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, and shall be payable by the owner in the same manner as that tax.

(3) Subject to the provisions of this part, the provisions of the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, and the rules made there under shall apply to the cess as if the cess were a tax levied under the said law or the Sampatti Kar Adhiniyam, as the case may be.

7. Collection of cess etc.-(1) Subject to the other provisions of this part and the rules made thereunder the authorities for the time being empowered to assess reassess, collect and enforce payment of tax on lands or buildings or both in respect of the annual letting value or annual value thereof in municipal area or urban area, under the law relating to local authority or the Sampatti Kar Adhiniyam, as the case may be, shall, on behalf of the State Government assess, reassess, collect and enforce payment of cess, including any penalty payable by the owner and for this purpose they may exercise all of the powers, they have under the said law or Adhiniyam.

(2) The proceeds of the cess collected by a local authority shall after deducting therefrom such sum of money on account of collection charges as the State Government may fix, be credited to the account of the State Government at such intervals and in such manner as may he prescribed and shall be applied to urban development schemes particularly to slum clearance.

PART III

Cess on Transfer of Vacant Land and Land Used for the Purpose of Agriculture

8. Definition.-In this part,

(a) "vacant land" means open land, not being mainly used for the purpose of agriculture;

(b) expressions "agriculture" and "land" shall have the meanings assigned to these expressions in the Madhya Pradesh Land Revenue Code, 1959 (No 20 of 1959).

9. Levy of cess on transfer of vacant land,- 1[(1) There shall be charged, levied and paid a cess on transfer by way of sale, gift, lease for a period of thirty years or more or usufructuary mortgage, of vacant land and land used for the purpose of agriculture 2[at the rate of five per centum of the amount of stamp duty with which instrument of each such transfer is chargeable in accordance with the relevant article in Schedule 1- A of the Indian Stamp Act, 1899 (No.2 of 1899)]:

Provided that exemption under the Indian Stamp Act. 1899 (2 of 1899) shall, mutatis mutandis apply to the same extent in relation to cess under this Act as it applies to duty chargeable under that Act as if the cess were a duty chargeable under that Act.] 3[x x x]

(2) The cess charged and levied under sub section (I) shall be paid and recovered along with the registration of instrument of transfer of the vacant land and land used for the purpose of agriculture. 1[The payment of the cess, sha11 be indicated on the instrument of transfer by means of stamps issued under the Indian Stamp Act, 1899 (II of 1899).]

1. Subs. By M.P.35 of 1982, w.e.f. 1.10.1982.

2. Subs. By M.P. 9 of 1984, w.e.f 1.12.1983, the date of coming into force of Ord. 9 of 1983 which was replaced by this Act.

3. Explanation omitted by M.P.9 of 1984, w.e.f. 7.4.1984

(3) The cess shall be payable by the person by whom the stamp duty is payable under the Indian Stamp Act, 1899 (II of 1899).

(4) Notwithstanding anything contained in the Registration Act, 1908 (XVI of 1908), no officer thereunder shall admit to registration any document unless the cess charged and levied under sub-section (1) is paid in fu1l.

2 [(4-a) The provision of section 48 of the Indian Stamp Act, 1899 (II of 1899) sha11 apply to recovery of cess under this Part as it applies to recovery of duties and penalties under this Act.]

(5) The proceeds of the cess shall be applied to rural development specially for providing employment in rural areas.

PART IV
4[Cess on Land Held, In Connection with Mineral Rights]

5[10. Definitions.- For the purposes of this part,

(a) "land" means land situate in the State and held under a mining lease for undertaking minting operations in relation tomajor mineral including operations for raising, winning or estracting coal;

(b) "major minerals" shall incljude the minerals defined in the Mines and Minerals (Regulation and Development) Act, 1957 (No. LXVII of 1957) but shall not include the minor minerals as defined therein;

(c) "minerals rights" means rights conferred on a lessee from the state under amining lease granted for mining operations in relation to major mineral including operations for raising, winning or extracting Coal.

11. Levy of cess on land held in connection with mineral rights.- (1) There sha11 be levied and collected a cess on land held in connection with mineral rights at such rate as may be notified by the State Government per ton of major mineral raised therefrom subject to the maximum of rupees ten per ton of major mineral raised and the rate of cess prevailing in respect of the coal during the period commencing from the date of commencement of the principal Act and ending on the date of commencement of the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 1987, shall be deemed to be the rate of cess notified under this sub-section in respect of coal:

1. Added by M.P. 35 of 1982, w.e.f. 1.0.1982.

2. Ins. By M.P. 35 of 1982 [1.10.1982].

3. Parts IV & V subs. in place of Part IV by M.P. 35 OF 1982, Parts IV & V brought into force from 1.10.1982 vide notification dated 30.9.1982, published in M.P. Rajpatra, (Asadharam), dated 30.9.1982, p.1837.

4. Heading substituted by M.P. 21 of 1987, w.e.f 1.10.1982.

5. Ss. 10 & 11 subs. by M.P.21 of 1987, w.e.f. 1.10.1982.

Provided that subject to the limitation mentioned above the State Government may, by notification, increase or reduce the rate of cess at an interval of not less than one year, where the rate is increased it shall not be in excess of fifty per cent of the rate for the time being in force:

Provided further that every notification under the above proviso shall be laid on the Table of the Legislative Assembly and the provisions of section 24-A of the Madhya Pradesh General Clause Act, 1957 (No.3 of 1958) shall apply thereto as they apply to a rule.

(2) The rate of cess to be notified for the first time in exercise of the powers conferred by sub-section (1) shall be effective from the 1st April, 1987.

(3) The cess levied under sub-section (1) shall, subject to and in accordance with the rules made in this behalf, be assessed and collected by such agencies and in such manner as may be prescribed.

(4) The agencies prescribed under Sub-section (3) shall for the purpose of assessment, collection and recovery of cess and all matters connected therewith, exercise such of the powers conferred upon the authorities specified in section 3 of the Madhya Pradesh General Sales Tax Act, 1958 (No.2 of 1959) for the purposes aforesaid in respect of sales tax under the said Act and the rules made thereunder, as may be prescribed as if such agencies were the authorities specified in the said section 3 and the cess on land held in connection with mineral rights were the tax levied under the said Act.]

NOTIFICATION

[No. A-5-14-87-ST-V (21), dated 28.5.1987, Published in M.P.Rajpatra, (Asadharan), dated 1.6.1987, p.1263]

In exercise of the powers conferred by S.11(1), the State Government has notified five rupees per ton as the rate of cess for the purpose of sub-section (1).

COMMENTARY

1. Cess levied under the section is a tax and not fee.- In order that an impost to be a fee, it must have some relation to the services rendered and that though such relation

need not be direct, a mere casual relation may be enough. As there is not even any casual relation whatsoever between the amount of cess to be recovered and any services to be rendered for that purpose, the cess is not a fees. It is a tax. M.P. *Lime Manufactures Assoc. v. State of M.P.,* **AIR 1989 MP 264=1989 MPLJ 561=1989 JLJ 605** (FB).

2. Impost is ultra vires.- [1] As the character of impost under s.11 is that though in form it appears to be a tax on land, in substance, it is a tax on minerals, produced therefrom and the same is also not a tax imposed on mineral right of every holder of mining lease, the same is not covered either by Entry 49 or Entry 50 of List II of Schedule VII of the Constitution, the impost is ultra vires. M.P. *Lime Manufactures Assoc.v. state of M.P.,* **AIR 1989 MP 264=1989 MPLJ 561=1989JLJ 605 (FB).**

[2] The view taken by the High Court is further confirmed by the Supreme Court. See *Orissa Cement Ltd. v. State of Onssa,* **AIR 1991 SC 1676.**

12. 1[xxx]

PART V
Miscellaneous

13. Power to make rules. -(1) The State Government may, after previous publication, make rules to carry out the purposes of this Act.

(2) All rules made under this section shall laid on the Table of the Legislative Assembly.

14. Power to remove difficulty.- If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provision of this Act revove the difficulty.

MADHYA PRADESH ACT NO.18 OF 2001

THE MADHYA PRADESH UPKAR (SANSHODHAN) ADHIMIYAM, 2001

[Received the assent of the Governer on the 17 th September 2001: assent first published in the Madhya Pradesh Gazette (Extraordinary) dated 17th September 2001]

An Act further to amend the Madhya Pradesh Upkar Adhiniyam, 1981.

Be it enacted by the Madhya Pradesh Legislature in the Fifty-Second Year of the Republic of India as follows:-

1. This Act may be called the Madhya Pradesh Upkar (Sanshodhan) Adhiniyam, 2001.

2. For section 3 of the Madhya Pradesh Upkar Adhiniyam 1981 (No. 1 of 1982) the following section shall be substituted, namely :-

3(1) Every distributor of electrical energy shall pay to the State Government at the prescribed time and in the prescribed manner an energy development cess at the rate of one paise per unit on the total units of electrical energy sold or supplied to a consumer or consumed by himself or his employees during any month.

Provided that no cess shall be payable in respect of electric energy -

(i) (a) sold or supplied to the Government of India for consumption by that Government; or

(b) sold or supplied to the Government of India or a railway company for consumption in the construction, maintenance or operation of any railway administered by the Government of India;

(ii) sold or supplied in bulk to a Rural Electric Cooperative Society registered under the Madhya Pradesh Cooperative Societies Act, 1960 (No. 17 of 1961);

Explanation -For the purpose of this sub-section 'month' means such period as may be prescribed.

(2) Every producer producing electrical energy by his captive power unit or diesel generator set of capacity exceeding 10 Kilowatt in total shall pay to the State Government an energy development cess at the rate of 20 paise per unit on the total units of electrical energy produced whether for sale or supply to a consumer or for consumption by himself or his employees during any month.

Provided that no cess shall be payable in respect of electrical energy produced by -

(i) the Government of India for consumption by that Government.

(ii) the Government of India or a railway company for consumption in the construction, maintenance or operation of any railway administered by the Government of India.

(iii) the State Government for consumption by that Government.

(iv) a Rural Electric Cooperative Society registered under the Madhya Pradesh Cooperative Societies Act, 1960 (No. 17 of 1961).

(v) the Local bodies including Municipal bodies and Panchayats for consumption in public street lamp or lamps in any market place or water works or any other places of public resort maintained by such bodies.

Provided further that the amount of energy development cess shall be collected by the Madhya Pradesh State Electricity Board and the amount so collected shall be made available to the State Government.

(3) The proceeds of the cess under sub-section (1) and (2) shall first be credited to the Consolidated Fund of the State and the State Government may, at the commencement of each financial year, after due appropriation has been made by law, withdraw from the Consolidated Fund of the State an amount equivalent to the proceeds of cess realized by the State Government in the preceding financial year and shall place it to the credit of a separate fund to be called the Energy Development Fund and such credit to the said fund shall be an expenditure charged on the Consolidated Fund of the State Government of Madhya Pradesh.

(4) The amount in the credit of the funds shall, at the discretion of the State Government be utilized for -

(a) research and development in the field of energy including electrical energy as well as other conventional and non-conventional sources of energy;

(b) improving the efficiency of generation, transmission, distribution and utilization of energy including reduction of losses in transmission and distribution;

(c) research in design, construction, maintenance, operation, and materials of the equipment used in the field of energy with a view to achieve optimum efficiency, continuity and safety;

(d) survey of energy sources including non-perennial sources to alleviate energy shortage;

(e) energy conservation programmes;

(f) extending such facilities and services to the consumers as may be deemed necessary;

(g) creation of a laboratory and testing facilities for testing of electrical appliances and equipments and other equipments used in the field of energy;

(h) programmes of training conducive to achieve any of the above objectives;

(i) transfer of technology in the field of Energy;

(j) any purpose connected with safety of electrical installations; and

(k) any other purposes connected with improvement of generation, transmission, distribution or utilization of electrical and other forms of energy, as the State Government may, by notification, specify.

Explanation- In this sub-section 'energy' includes all conventional and non-conventional forms of energy.

(5) If any question arises as to whether the purpose for which the fund is being utilized is a purpose falling under sub-section (4) or not, the decision of the State Government thereon shall be final and conclusive.

3. The Madhya Pradesh Upkar (Sansodhan) Adhyadesh, 2001 (No. 2 of 2001) is here by replaced.